Sheriff's return shows service of summons upon Ralph Thomas and Mrs. W. D. Thomas each in person, Trading as Enterprise Harnes- Company, 8th day of July.)

[fol. 9] IN CIRCUIT COURT OF PULASKI COUNTY,
SECOND DIVISION, MARCH TERM, 1932

W. B. WORTHEN COMPANY, Agent, Plaintiff,

v.

RALPH THOMAS and MRS. W. D. THOMAS, Partners, Trading as Enterprise Harness Company, Defendants

JUDGMENT—August 31, 1932

On this day comes plaintiff by its attorneys, Murphy & Murphy, and the defendants, although each solemnly called three times at the bar of this Court, come not, but wholly make default; and it appears to the Court from the return of the sheriff filed herein that the defendants were, on the 8th day of July, 1932, duly served with summons notifying them of the pendency hereof, and that they have failed to answer or to plead in any manner herein; and this cause now coming on to be heard, plaintiff announces ready for trial; whereupon this cause is submitted to the Court upon the pleadings and the verified statement of account sued upon; and the Court, being well and sufficiently advised as to all matters of law and fact arising herein, doth find that the defendants are justly indebted unto the plaintiff upon the account sued upon in the sum of $1200.00, with interest thereon at the rate of 6% per annum from the 5th day of July, 1932;

It is, therefore, considered, ordered and adjudged by the Court that the plaintiff, W. B. Worthen Company, Agent, do have and recover of and from the defendants, Ralph Thomas and Mrs. W. D. Thomas, partners, trading as Enterprise [fol. 10] Harness Company, the sum of $1200.00, with interest thereon at the rate of 6% per annum from the 5th day of July, 1932, which interest to this date amounts to the sum of $11.40, amounting in the aggregate to the sum of Twelve Hundred Eleven and 40/100 ($1211.40) Dollars, for its debt

and interest to this date, together with all of its costs in and about this cause expended, for which execution may issue.

And plaintiff moves the court for an order permitting immediate execution to issue; and the court, being well and sufficiently advised, doth grant said motion.

The following endorsement appears upon the margin of the record of the foregoing judgment:

"For value received Lot 15 Block 20 Pfeifer Addn. to City of Little Rock, Ark., is released from the lien of this judgment this 4th May, 1933. W. B. Worthern Co., Agt., by James Keith, V. P. Attest: B. T. Hoff, Clerk, by V. S. O'Neal, D. C. 5/4/33."

[fol. 11] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ALLEGATIONS AND INTERROGATORIES FOR GARNISHMENT—Filed March 10, 1933.

Comes said plaintiff and files the following allegations and interrogatories:

Said plaintiff alleges:

First. That said Missouri State Life Insurance Company, the garnishee herein, was on and after the date of the service of the writ of garnishment herein, indebted to said Mrs. W. D. (or Van C.) Thomas, the defendant, to wit: In the sum of Five Thousand ($5,000.00) Dollars.

Second. That said garnishee, on and after the date aforesaid, had in its hands and possession, certain goods, chat-
[fol. 12] tels, moneys, credits and effects belonging to said defendant, of the value of Five Thousand ($5,000.00) Dollars.

And the plaintiff propounds to the said garnishee the following interrogatories:

First: Were you on or after the date of the service of the writ of garnishment, indebted to defendant, Mrs. W. D. (or Van C.) Thomas? If so, how were you indebted, and for what amount?

Second. Had you in your hands and possession, on or after said date, any goods, chattels, moneys, credits or effects belonging to said defendant? If so, what was the nature and value thereof?

Murphy & Murphy, Attorneys for Plaintiff.

[Endorsed:] "Filed and writs of garnishment issued Mar. 10, 1933. B. T. Hoff, Circuit Clerk, by O. L. McNair, D. C."

[fol. 13] IN CIRCUIT COURT OF PULASKI COUNTY

No. 24506

WRIT OF GARNISHMENT AND RETURN—Filed March 16, 1933

STATE OF ARKANSAS,
County of Pulaski:

To the Sheriff of Pulaski County, Greeting:

Whereas, W. B. Worthen Company, Agent, obtained a judgment in the Pulaski Circuit Court on the 31st day of August, 1932, in an action of debt against Ralph Thomas and Mrs. W. D. Thomas, partners, trading as Enterprise Harness Company, for the sum of Twelve Hundred Eleven and 40/100 ($1211.40) Dollars debt, and also the sum of — Dollars damages, with interest thereon at six per cent per annum, from the 31st day of August, 1932, until paid, together with *costs in that case* expended, which judgment still remains unsatisfied; and,

Whereas, it is alleged by said plaintiff that it has reason to believe that Missouri State Life Insurance Company is indebted to said Mrs. W. D. (or Van C.) Thomas, or has in its hands and possession goods, chattels, moneys, credits and effects belonging to said defendant.

Now therefore, You are hereby commanded to summon the said Missouri State Life Insurance Company, if it can be found within your ba-liwick, to appear before the Judge of our Circuit Court of Pulaski County, at the court house in the county aforesaid, within twenty days from the service of this writ upon it, then and there to answer what goods, chattels, moneys, credits and effects it may have in its hands

or possession belonging to said defendant, Mrs. W. D. (or Van C.) Thomas, to satisfy the judgment aforesaid; and [fols. 14 & 15] also to answer such further interrogatories as may be exhibited against it, and that you will make due return of this writ to our said circuit court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Little Rock, Arkansas, on this 10th day of March, 1933.

B. T. Hoff, Clerk, by O. L. McNair, D. C. (Seal.)

STATE OF ARKANSAS,
County of Pulaski, ss:

The within writ came to my hands on the 10th day of March, 1933, A. D. at 11:25 o'clock A. M., and I have, this 10th day of March, 1933, A. D. at 11:50 o'clock A. M., duly served the same by delivering a true copy thereof to Missouri State Life Insurance Company by delivering a true copy to U. A. Gentry, State Insurance Commissioner, agent designated for service, in said county, as herein commanded.

L. B. Branch, Sheriff, by Harry Narkinsky, D. S.

Service	$.75
Mileage	.10
Total	.85

[File endorsement omitted]

[fol. 16] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION TO DISMISS WRIT OF GARNISHMENT—Filed April 5, 1933

Comes the defendant, Mrs. W. D. Thomas, and by leave of the court files herewith her motion to dismiss a certain writ of garnishment issued by the clerk of this court on the 10th day of March, 1933, and for the further purpose of scheduling a certain sum of money owed her by the Mis-

souri State Life Insurance Company as exempt from garnishment or seizure, and for cause states:

That on or about the — day of ——, 1932, plaintiff W. B. Worthern Company filed an action in the Pulaski Circuit Court asking for judgment against the defendants herein. That on or about the — day of ——, 1932, a judgment by default was rendered against the defendants in favor of the plaintiff in this action for the sum of $1200 and costs. That on or about the 10th day of March, 1933, the plaintiff had the clerk of this court issue a writ of garnishment and interrogatories, which writ of garnishment and interrogatories were served on the Missouri State Life Insurance Company.

That the Missouri State Life Insurance Company is indebted to this defendant, Mrs. W. D. Thomas, in the sum of Five Thousand Eight- Seven and 80/100 Dollars ($5087.50) by reason of the said defendant, Mrs. W. D. Thomas, being the beneficiary of the policy of insurance upon the life of [fol. 17] her husband, W. D. Thomas, who died on March 5, 1933.

That under the laws of this state any moneys paid or payable to any resident of this state as the beneficiary designated under any life insurance policy is exempt from liability or seizure under any judicial process of any court, or shall it be subject to the payment of any debt by contract by any writ, order, judgment or decree of any court of this state.

That under and by virtue of the laws of this state, the defendant, Mrs. W. D. Thomas, is claiming the aforesaid amount owed her by the Missouri State Life Insurance Company as exempt from garnishment, seizure or attachment.

Wherefore, defendant, Mrs. W. D. Thomas, prays that an order issue from this court releasing the aforesaid sum of money from the aforementioned writ of garnishment, for her costs herein expended, and for all other proper relief.

Harry Robinson, Attorney for Defendant Mrs. W. D. Thomas.

Duly sworn to by Mrs. W. D. Thomas. Jurat omitted in printing.

[fol. 18] [File endorsement omitted.]

[fol. 19] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ANSWER OF GARNISHEE—Filed April 6, 1933

Heretofore this garnishee issued to W. D. Thomas its policy No. 868,000 in the amount of $5,000. The defendant, Mrs. W. D. Thomas, known also as Van Cleve Thomas, is designated as beneficiary therein, and she has made claim on this garnishee for the proceeds of said policy. By reason of certain accumulations on said policy this garnishee admits an indebtedness thereunder in the amount of $5,057.80. It is ready to pay this amount to the said beneficiary when authorized to do so by an order of this court.

Answering further, this garnishee states that by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all monies payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. The defendant, Mrs. W. D. Thomas, is a resident of this State.

Wherefore, having fully answered, this garnishee prays that the court enter an order discharging it of all liability [fols. 20 & 21] to the plaintiff, and that it be authorized to pay the proceeds of the policy aforesaid to the defendant, Mrs. W. D. Thomas.

Rose, Hemingway, Cantrell & Loughborough, Attorneys for Garnishee.

[File endorsement omitted.]

[fol. 22] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

RESPONSE TO MOTION TO DISMISS—Filed April 20, 1933

Comes W. B. Worthen Company, Agent, by its attorneys, Murphy & Murphy, and for response to motion to dismiss filed by the defendant, Mrs. W. D. Thomas, states:

That on the 7th day of July, 1932, a suit was filed in the Pulaski Circuit Court by W. B. Worthen Company, Agent,

versus Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and a judgment was entered therein against the defendants, Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and each of them, on August 31, 1932, [fol. 23] for $1,211.40 plus interest thereon at the rate of 6% per annum from August 31, 1932, until paid and for its costs expended therein. Thereafter an execution was issued out of said court against Ralph Thomas and Mrs. W. D. Thomas, partners trading as Enterprise Harness Company, and said execution was return unsatisfied. Thereafter on the 10th day of March, 1933, a writ of garnishment was issued out of the Pulaski Circuit Court in said case by the plaintiff with allegations and interrogatories attached directed to and served upon the Missouri State Life Insurance Company alleging that it had in its hands and possession the sum of $5,000.00 belonging to the defendant herein, Mrs. W. D. Thomas. Said writ of garnishment was served on the Missouri State Life Insurance Company on March 10, 1933. On April 6, 1933, the Missouri State Life Insurance Company, garnishee in said action, filed its answer in the above styled case, wherein it admitted that W. D. Thomas had policy No. 868,000 in the Missouri State Life Insurance Company in the sum of $5,000, and that the defendant, Mrs. W. D. Thomas, was the beneficiary therein. The said garnishee in said answer admitted that it owed Mrs. W. D. Thomas, defendant herein, the sum of $5,057.80 at the time the writ of garnishment was served upon it by the plaintiff herein and that it was ready and willing to pay said sum.

That on or about the 6th day of April, 1933, the said Missouri State Life Insurance Company, garnishee herein, acting under order signed by the judge of the Pulaski Circuit Court, Second Division, paid into the registry of this court [fol. 24] the sum of $2,000 for the purpose of paying the claim of the plaintiff herein under its writ of garnishment against Missouri State Life Insurance Company and upon payment of said money into the registry of this court, the said garnishee, Missouri State Life Insurance Company was released.

In response to motion of the defendant, Mrs. W. D. Thomas, that said writ of garnishment be dismissed, peti-

tioners state that this writ of garnishment was served on Missouri State Life Insurance Company on the 10th day of March, 1933, and under the law of Arkansas, the lien of a garnishment dates from the time served and the service of said writ creates a lien and no subsequent arrangement or cancellation of the indebtedness between the garnishee and defendant could destroy said lien. That has always been the law of Arkansas under a writ of garnishment. Said lien having attached against this money on March 10, 1933 would in no way be effected by the passage of Act 102 of the 1933 Legislature which did not become a law until the 16th of March, 1933. It was not intended that Act 102 should have any effect on suits then pending as it was only an addition added to the provisions of Acts 76 and 141 of the Acts of the General Assembly of 1931 and both of those acts specifically state that they in no way affect suits pending at the time of their passage. In the case at bar the suit was not only pending, but the lien of the garnishment had attached to this money before Act 102 ever became a law. Act 102 refers only to writs or seizure under judicial process of any court, which shall issue after its passage, so it [fol. 25] could in no sense affect a garnishment which became a lien six days before its passage.

If said Act 102 were to cancel and set aside liens and rights of parties which were in effect at the time of its passage, thus reaching back to set aside rights then in effect, it would be a violation of Article 1 Section 9 of the Constitution of the United States which provides that no ex post facto law shall be passed. It would also be a violation of Article 1 Section 10 of the Constitution of the United States which provides that no state shall pass any ex post facto law or law impairing the obligation of contracts. If Act 102 were to affect this garnishment, which became a lien upon this money on the 10th day of March, 1933, six days before the law became effective, then it would be an ex post facto law. If Act 102 were to set aside the lien of this writ of garnishment which was in effect at the time the law was approved, it would be impairing the obligation of an existing contract.

Your petitioners further invite the court's attention to the fact that Act 102 does not apply at all in the case at bar as the only purpose of Act 102 was to set out more clearly and add provisions to Acts 76 and 141 of the Acts

of the General Assembly of 1931. Those acts have reference only to the debts of the deceased and do not have reference to debts of the beneficiary in said policy. Act 102 clearly sets forth and refers only to the person who took out the insurance, who pays the premiums thereon. That fact is clearly shown because said act states that the holder [fol. 26] of said policy after the passage of Act 102 still has the right to assign, mortgage, pledge or hypothecate any policy of insurance on which he is paying premiums. Said act in no way refers to the case at bar where the judgment is against the beneficiary under the policy and not against the person who took out the policy and paid the premiums thereon during his life time.

Your petitioner further states that section 3 of Act 102 of the Acts of 1933 shows clearly that said act refers to the debts of the person who takes out the policy and not to the debts of the beneficiary thereunder. A part of section 3 which shows that fact clearly, reads as follows: "It is ascertained and hereby declared that the vast majority of those now holding insurance policies are compelled, owing to the desperate financial situation now existing, to make every possible sacrifice in order to maintain their policies in force for the benefit of themselves and their families, and that in most instances whatever rights they hold in said policies constitute their entire resources."

Wherefore, plaintiff, W. B. Worthen Company, Agent, prays that the motion to dismiss be stricken and for naught held, and that an order issue from this court directing B. T. Hoff, Circuit Clerk and Recorder of Pulaski County, Arkansas, to pay to the plaintiff herein out of the proceeds of the $2,000 paid into the registry of the court by the Missouri State Life Insurance Company the sum of $1,211.40 plus [fols. 27-29] interest thereon at the rate of 6% per annum from August 31, 1932, until paid, plus all its costs herein expended and for all other proper relief.

Murphy & Murphy, Attorneys for Plaintiff.

[fol. 30] IN CIRCUIT COURT OF PULASKI COUNTY

W. B. WORTHEN COMPANY, Agent, Plaintiff,

v.

RALPH THOMAS and MRS. W. D. THOMAS, Trading as Enterprise Harness Company, Defendants; Missouri State Life Insurance Company, Garnishee

JUDGMENT—May 12, 1933

On this day comes the plaintiff by its attorneys, Murphy & Murphy, and comes the defendant, Mrs. W. D. Thomas (or Van C.) Thomas, by her attorney, Harry Robinson, Esq., and this cause now coming on to be heard upon the motion of said defendant to dismiss the garnishment herein, and upon her schedule of exemptions of the proceeds of an insurance policy, she being the beneficiary under a policy of life insurance upon the life of W. D. Thomas, deceased, issued by the garnishee, Missouri State Life Insurance Company; whereupon, said motion and schedule are submitted to the Court after argument of counsel; and it appears to the court that under order of this court entered herein on the 7th day of April, 1933, the garnishee, Missouri State Life Insurance Company, paid into the registry of this Court the sum of $2,000.00 and was released from further answer or liability herein as garnishee, which said sum of $2,000.00 is being held in the registry of the court subject to the further orders of the court in this action; and the court, being well and sufficiently advised as to all matters of law and fact arising herein, doth find that said sum of money is exempt from liability or seizure under any judicial process of any court, and doth grant said motion and schedule;

[fol. 31] It is, therefore, considered, ordered and adjudged by the court that the said sum of $2,000.00 be and the same is hereby released from liability or seizure under the garnishment proceedings herein; and the clerk of this court is hereby directed to pay over said sum of $2,000 to the defendant, Mrs. W. D. (or Van C.) Thomas, or her attorney of record, taking receipt therefor upon the margin of the record hereof;

To which action of the court in granting said motion and schedule the plaintiff at the time excepted and asked that

its exception be noted of record, which is hereby accordingly done;

Thereupon plaintiff prayed an appeal to the Supreme Court of Arkansas, which was granted; and plaintiff is allowed ten days' time within which to file its supersedeas bond herein.

[fols. 32–36] Supersedeas bond on appeal, approved and filed May 18, 1933, omitted in printing.

[fol. 37] IN SUPREME COURT OF ARKANSAS

3192

W. B. WORTHEN COMPANY, Agent, Appellant,

v.

MRS. W. W. THOMAS, Appellee

Appeal from Pulaski Circuit Court, Second Division

JUDGMENT—NOV. 27, 1933

This cause came on to be heard upon the transcript of record of the circuit court of Pulaski County, Second Division, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment of said circuit court in this cause rendered be, and the same is hereby in all things affirmed with costs.

It is further considered that said appellee recover of said appellant and George G. Worthen and Mollie P. Worthen, sureties in the supersedeas bond filed in this cause, all her costs in this Court and the court below, in this cause expended, and have execution thereof. Opinion by Kirby, J.; Mehaffey, J., dissents.

[fol. 38] IN SUPREME COURT OF ARKANSAS

W. B. WORTHEN COMPANY, Agent,

v.

THOMAS

OPINION—November 27, 1933

Statement by the Court

Appellant, W. B. Worthen Co., Agent, plaintiff below, procured judgment in personam against one Ralph Thomas and Mrs. W. D. Thomas, known also as Van Cleve Thomas, appellee herein, doing business as co-partners under the firm name and style of Enterprise Harness Company, based upon personal service of summons upon each of said defendants, in the Pulaski Circuit Court, Second Division, on August 31, 1932, in the sum of $1200 with interest thereon at 6% per annum from July 5, 1932, until paid and costs. The judgment was not appealed from and remains in full force.

Pursuant to said judgment the appellant caused writs of garnishment with allegations and interrogatories to be served upon certain persons, naming them, who answered denying having any property belonging to either Ralph Thomas or Mrs. W. D. Thomas, and stating further that they were not indebted to them, or either of them, in any amount.

That appellant caused a writ of garnishment based upon the judgment aforesaid with allegations and interrogatories to be served upon the Missouri State Life Insurance Company by the sheriff of Pulaski County by delivering same to U. A. Gentry, State Insurance Commissioner, the agent designed by said garnishee for service of process upon it in Pulaski County, wherein appellant alleged that said garnishee had in its hands and possession $5,000 belonging to appellee as shown by the sheriff's return.

[fol. 39] The Legislature enacted Act 102 at its 1933 session, the title and first section of which reads as follows:

Act 102

"An Act to Extend the Exemption Laws of This State"

Be it enacted by the general assembly of the State of Arkansas:

"Section 1. All moneys paid or payable to any resident of this State as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, sick, accident and/or disability benefits shall be exempt from liability or seizure under judicial process of any court, and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, provided, that the validity of any sale, assignment, mortgage, pledge or hypothecation of any policy of insurance or if any avails, proceeds or benefits thereof, now made, or hereafter made, shall in no way be affected by the provisions of this act." Approved: March 16, 1933."

Appellee filed a motion to dismiss the writ of garnishment against the life insurance company issued and served on March 10, 1933, and for the further purpose of scheduling a certain sum of money owed her by the aforesaid insurance company as exempt from garnishment or seizure under the provisions of Act 102 of 1933, which she alleged exempted the money due her from garnishment or seizure under the judicial process of any court.

On April 6, 1933, the insurance company answered the garnishment stating that it had issued theretofore to W. D. [fol. 40] Thomas its policy No. 86800 in the amount of $5,000; "that appellee herein, Mrs. W. D. Thomas, known also as Van Cleve Thomas, was designated as beneficiary therein, and that she had made claim on it for the proceeds of said policy. That by reason of certain accumulations on said policy that it admitted an indebtedness thereunder in the amount of five thousand fifty-seven and 80/100 dollars ($5057.80), and that it was ready to pay this amount to said beneficiary when authorized to do so by an order of the Pulaski Circuit Court."

It stated further: "that by the provisions of Act 102, enacted by the General Assembly of the State of Arkansas, at its 1933 session, all moneys payable to any resident of this State under a policy of insurance are exempt and not subject to seizure under judicial process of any court. That appellee was then a resident of this State," and prayed the court to enter an order discharging it of all liability to appellant, and that it be authorized to pay the proceeds of the policy to appellee.

On April 7, 1933, the court upon a petition of appellee found that $2,000 was a sufficient amount to satisfy any claim or judgment that appellant could have against any of the funds held by the insurance company, and ordered upon the payment of that amount into the registry of the court by it, that said company should be discharged from any liability arising from the writ of garnishment and that it be discharged with its costs.

On April 20, 1933, appellant filed its response to the motion to dismiss the writ of garnishment, and on April 29, it filed [fol. 41] an amendment thereto in which it resisted the aforesaid motion to dismiss, challenging Act 102 of 1933 as unconstitutional and void.

On the hearing the court found that the insurance company had paid $2,000 into the registry of the court pursuant to its order and was discharged from further liability as garnishee, which was held subject to further order of the court, and that said sum of money was exempt from liability or seizure under any judicial process of any court and granted said motion and schedule. Ordered that the money paid into court be released from liability under the garnishment and ordered the clerk to pay over the money to Mrs. W. D. Thomas, or her attorney of record, taking a receipt therefor on the margin of the record. Appellant excepted to the court's action in granting the motion and schedule and prayed an appeal to the Supreme Court.

KIRBY, J. (after stating the facts):

The only question for determination here is the constitutionality of act 102 of 1933, approved March 16, 1933.

It is insisted that said act is violative of section 10, article 1 of the Constitution of the United States as impairing the obligations of a contract, and section 17 of article 2 of the Constitution of Arkansas.

In Acree v. Whitley, 136 Ark. 149, 206 S. W. 137, it was said: "It may be stated at the outset that section 21 does not relate to the absolute exemption of personal property allowed a resident of this State as exempt from certain debts and liabilities under sections 1 and 2 of article 9 of [fol. 42] our constitution. The reason is, beneficiaries in insurance policies, as well as other persons, are obliged to pay judgments against them in favor of third persons and exemptions from execution and other process of the court

are fixed by the sections of the Constitution above referred to. The statute in question was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the Constitution and laws of this State, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

It is true this act is broader in its terms than the one construed in the above case, since it exempts all moneys payable to any resident of the State: "as the insured or beneficiary designated under any insurance policy or policies providing for the payment of life, etc. * * * from liability or seizure under judicial process of any court, and shall not be subject to the payment of any debt by contract or otherwise by any writ, order, judgment or decree of any court, * * * provided that the validity of any sale, mortgage, or hypothecation of any policy of insurance, etc., shall in no way be affected by the provisions of this act."

As said by this court of the other statute, it can well be said of this statute, Act 102 of 1933, that it "does not relate to the absolute exemption of personal property allowed a resident of this State as exempt from certain debts and [fol. 43] liabilities under sections 1 and 2 of Article 9 of our Constitution. * * * was not enacted for the purpose of allowing beneficiaries exemptions which they are not entitled to under the constitution and laws of this state, but the act was passed for the purpose of exempting these funds from the operation of our general statutes regulating issuance of garnishments and proceedings thereunder."

This could be done without violation of our constitution. No creditor has the right to any particular remedy and such statutes prohibit only the issuance of garnishments against such funds as already held by our court; and neither does it violate the constitution of the United States in impairing the obligations of a contract by prohibiting the use of certain procedure in subjecting certain insurance funds to the payment of a judgment against the beneficiary in an insurance policy * * * funds that were not in existence when the judgment was obtained and were allowed to be provided for by the insured whom the law allows to expend a certain amount of money to provide insurance for the benefit of his wife.

The law allows the equities in cases to be considered in the construction of the statutes relating to the subject in question. Evans-Snider-Buel Co. v. McFadden, 58 L. R. A. 900.

The judgment is affirmed.

Mehaffy, J. dissents.

[fol. 44] IN SUPREME COURT OF ARKANSAS

W. B. WORTHEN COMPANY, Agent, Appellant,

vs.

MRS. W. D. THOMAS, Appellee

PETITION OF APPELLANT FOR REHEARING—Filed Dec. 13, 1933

The Appellant, W. B. Worthen Company, Agent, petitions the court to grant a new hearing in the above styled cause for the reasons hereinafter set forth.

Assignments of Error

That Act 102, approved March 16, 1933, is clearly violative of the following constitutional provisions: Section 10 of Article 1 of the Constitution of the United States and section 17 of Article 2 of the Constitution of Arkansas, which alike provide that no law impairing the obligation of contracts shall ever be passed. Secton 4 of Article 4 of the Constitution of the United States, which provides that the United States shall guarantee to every State in this Union a Republican form of government. The 5th Article of Amendment to the Constitution of the United States which provides that no person shall be deprived of life, liberty, or property, without due process of law. Section 1 of the 14th Article of Amendment to the Constitution of the United States which declares that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Sections 1 and 2 of Article 9 of the Constitution of Arkansas which declare with reference to [fol. 45] exemptions, that personal property of any resident

of this State, in specific articles to be selected by such resident, not exceeding in value the sum of $200 with respect to one not married or the head of a family or $500 as to one who is married or the head of a family, additionally to the wearing apparel of such person and his or her family, shall be exempt from seizure on attachment, or sale on execution, or other process from any court on debt by contract.

3. The opinion of the court is erroneous as a matter of law in that it ignores the elementary principle of law that the remedy in force at the time and place of making a contract is an integral part thereof as fully to all intents and purposes as though incorporated therein by express language.

[fol. 46] 8. This court erred as a matter of law by upholding as valid a legislative enactment, retrospective in its character and operation, which has directly destroyed vested property rights and appellant's only efficacious remedy, without providing any substitute remedy that is substantial and efficient.

Wherefore, appellant prays that this cause be re-heard and that judgment of the trial court be reversed in conformance with the relief prayed for by the appellant in the original hearing hereof.

Francis T. Murphy, Eugene H. Murphy, Counsel for Petitioner.

[File endorsement omitted.]

[fol. 47] IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—January 8, 1934

Being fully advised, the petitions for rehearing in the following causes are by the court severally overruled, viz:

* * * * * * *

3192

W. B. WORTHEN COMPANY, Agent,

v.

MRS. W. D. THOMAS

* * * * * * *

[fol. 48] Clerk's Certificate to transcript omitted in printing.

[fol. 49] IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL, ASSIGNMENT AND PRAYER—Filed Feb. 9, 1934

Considering themselves aggrieved by the final decision of the Supreme Court of the State of Arkansas in rendering judgment herein against them in the above entitled case, the appellants W. B. Worthen Company, Agent, George G. Worthen, and Mollie P. Worthen, hereby pray an allowance of appeal from the said decision and judgment to the United States Supreme Court, and an order fixing the amount of a supersedeas bond.

The said appellants assign the following errors in the records and proceedings in the said case:

1. The Supreme Court of Arkansas erred in depriving the appellant W. B. Worthen Company, Agent of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant W. B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

2. The Supreme Court of Arkansas erred in holding that Act 102 of the General Assembly of the State of Arkansas adopted March 16, 1933, is valid as applied to said appellant's rights in this cause. The court erred in holding that the act is valid in its provision that all proceeds of life, [fol. 50] sick, accident or disability benefit policies shall be

exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, judgment or decree of any court.

3. The Supreme Court of Arkansas erred in vacating the garnishment which said appellant had sued out and by which it had obtained a lien upon the proceeds of life insurance policy payable to appellee who is indebted to appellant W. B. Worthen Company, Agent, upon a judgment in this cause for the payment of money, such writ of garnishment having duly issued and a lien thereunder attached before the adoption of Act 102 named above.

4. The Supreme Court of Arkansas erred in holding that the proceeds of a life insurance policy payable to such judgment debtor upon a judgment obtained before the adoption of such act is exempt from garnishment or any other judicial process.

5. The Supreme Court of Arkansas erred in holding that appellant W. B. Worthen Company, Agent, a judgment creditor of appellee before the adoption of said Act 102, is without the remedy of judicial process to enforce payment by appellee from the proceeds of the policy of life insurance payable to appellee before the adoption of said Act 102.

6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment.

For which errors the appellants, W. B. Worthen Com-
[fol. 51] pany, Agent, George G. Worthen, and Mollie P. Worthen, pray that the said judgment of the Supreme Court of the State of Arkansas dated November 27, 1933, be

reversed and a judgment rendered in favor of these appellants, and for costs.

W. B. Worthen Company, Agent; George G. Worthen, Mollie P. Worthen, by Henry M. Armistead, Eugene H. Murphy, Francis T. Murphy, Attorneys for Appellants.

[File endorsement omitted.]

[fol. 52] IN SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed Feb. 9, 1934

The appeal herein petitioned for is allowed and ordered upon the execution of a bond by the appellants to Mrs. W. D. Thomas in the sum of $3,000, such bond when approved to act as a supersedeas.

C. E. Johnson, Chief Justice, Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[File endorsement omitted.]

[fols. 53–60] Supersedeas Bond on Appeal for $3,000, approved and filed Feb. 9, 1934, omitted in printing.

[fols. 61-69] Citation in usual form showing service on Mrs. W. D. Thomas, filed Feb. 9, 1934, omitted in printing.

[fol. 70] Certificate of lodgment omitted in printing.

[fol. 71] Return to Allowance of Appeal omitted in printing.

[fol. 72] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF APPELLANTS OF THE POINTS ON WHICH THEY INTEND TO RELY (RULE 13, PAR. 9), AND STIPULATION AS TO PRINTING RECORD—Filed March 12, 1934

Statement of the points upon which Appellants rely for a reversal:

Act 102 of the Acts of Arkansas, Forty-Ninth General Assembly, 1933, as construed by the Supreme Court of Arkansas in this case, is given an unconstitutional retrospective effect, vacating appellant W. B. Worthen Company, Agent's vested right in a garnishment lien, destroying all remedies and impairing the obligation of its contract, which was the foundation of the judgment, in violation of the United States Constitution, Article 1, Section 10 and the due process provisions of the Fourteenth amendment thereto.

These claims of appellant are set forth in the assignment of errors on this appeal in seven paragraphs (Tr. 49-51), which are somewhat repetitious but are summed up in paragraphs 1, 6, and 7 as follows:

"1. The Supreme Court of Arkansas erred in depriving the appellant W. B. Worthen Company, Agent, of all substantial remedy for the collection of its judgment by process of garnishment, which remedy was in existence under the laws of the State of Arkansas at the time the debt, which is the basis of appellant's judgment herein, was contracted and was in existence at the time the judgment was rendered and at the time the writ of garnishment issued and the lien thereof attached and at the time said Act 102 was adopted by the Arkansas General Assembly. The judgment of the court deprives appellant W, B. Worthen Company, Agent, of all effectual remedy and leaves it with no means to collect its judgment from the fund arising from said policy of insurance.

[fols. 73 & 74] "6. The Supreme Court of Arkansas erred in holding that said Act 102 as applied in this cause does not impair the obligation of contracts, contrary to the provisions of the Constitution of the United States, Article 1, Section 10.

"7. The Supreme Court of Arkansas erred in holding that Act 102 does not abridge the privileges and immunities of appellant W. B. Worthen Company, Agent, as guaranteed by the Fourteenth Amendment of the Constitution of the United States, and that it does not deprive said appellant of its property without due process of law contrary to the provisions of said amendment."

Respectfully submitted, Henry M. Armistead, Eugene H. Murphy, Francis T. Murphy, Attorneys for Appellants.

Little Rock, Arkansas;
March 8, 1934.

The undersigned, counsel for appellee Mrs. W. D. Thomas, hereby acknowledge service for the appellee of the foregoing statement of the appellants of the points on which they intend to rely.

Fred A. Isgrig, Kenneth W. Coulter, Harry Robinson, Attorneys for Appellee.

[fol. 75] STIPULATION OF PARTS OF RECORD TO BE PRINTED
(RULE 13, PARAGRAPHS 2 & 9)

Stipulation of the parties:

It is stipulated and agreed by and between Henry M. Armistead, counsel for the appellant, and Kenneth W. Coulter, Fred A. Isgrig and Harry Robinson, counsel for appellee, that the following portions of the record are designated under Rule 13, Paragraphs 2 and 9, to be printed:

Complaint in the Pulaski Circuit Court and exhibit (Tr. 4-6).

Garnishment Bond in the Pulaski Circuit Court (Tr. 7-8).

Judgment in the Pulaski Circuit Court (Tr. 9-10).

Order of Pulaski Circuit Court noting filing of allegations and interrogatories for garnishment and garnishment allegations and interrogatories (Tr. 11-12).

Writ of Garnishment and Return thereon (Tr. 13-14).

Motion to dismiss Writ of Garnishment (Tr. 16-18).

Answer of Garnishee (Tr. 19-20).

Response to Motion for Dismissal of Garnishment (Tr. 22-27).

Judgment of the Pulaski Circuit Court dismissing the writ of garnishment (Tr. 30-31).

Supersedeas Bond on Appeal to the Supreme Court of Arkansas (Tr. 32-34).

Opinion and judgment of the Supreme Court of Arkansas (Tr. 37-43).

Paragraphs Nos. 1, 3 and 8 of petition of appellant for rehearing in the Supreme Court of Arkansas (Tr. 44-45) and its filing date (Tr. 47).

Order Overruling Petition for Rehearing in the Supreme Court of Arkansas with date (Tr. 47).

Certificate of clerk of the Supreme Court of Arkansas (Tr. 48).

Petition for allowance of appeal, assignment of errors, and prayer for reversal to the Supreme Court of the United States (Tr. 49-51).

Allowance of appeal and date (Tr. 52).

[fols. 76 & 77] Supersedeas Bond on appeal with approval and date (Tr. 53-54).

Statement as to jurisdiction on appeal with acknowledgment of service and date (Tr. 55-60).

Acknowledgment of service of petition for appeal, order allowing appeal, assignments of error, statement as to jurisdiction and præcipe (Tr. 60).

Citation and acknowledgment of service and appellee's entry of appearance in the Supreme Court of the United States (Tr. 61).

Statement in denial of jurisdiction with date (Tr. 62-67).

Appellee's motion to dismiss or affirm with date (Tr. 68).

Acknowledgment of service of statement in denial of jurisdiction with date (Tr. 69).

Certificate of the clerk of the Supreme Court of Arkansas and return to allowance of appeal (Tr. 70-71).

It is further stipulated and agreed that, if from oversight or omission, any necessary part of the record be not thus printed, the appellant has the right to print, or may

be required by appellee to print, any further or additional portions thereof.

Dated March 1, 1934.

Henry M. Armistead, Counsel for Appellant. Kenneth W. Coulter, Fred A. Isgrig, Harry Robinson, Counsel for Appellee.

[fol. 78] [File endorsement omitted.]

Endorsed on cover: File No. 38,459. Arkansas Supreme Court. Term No. 856. W. B. Worthen Company, Agent, George G. Worthen and Mollie P. Worthen, Appellants, vs. Mrs. W. D. Thomas. Filed March 12, 1934. File No. 856, O. T., 1933.